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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,471	08/15/2000	DIRK FREUND	1826-017	8771
9629	7590	03/04/2004		
MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			EXAMINER NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER
			3736	21
DATE MAILED: 03/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/582,471

Applicant(s)

FREUND ET AL.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19, 26, 33, 36, 40 and 43-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 26 is/are allowed.
- 6) ☒ Claim(s) 33, 36, 40 and 43-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

The examiner regrets the discovery that the following rejection is pertinent to the claims, and notes that if the examiner may assist applicant in any way in preparing the response, applicant is invited to phone the examiner.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 33, 36, and 40 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There does not seem to be any basis for the time measuring mechanism, as there is only a timing mechanism which is a multiplexer claimed. Since this was not in the original claims, it constitutes new matter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terada JP 01265939 in view of Ota et al. Terada teaches a method of measuring blood pressure using a cuff disposed so that a body of the cuff lies on the thumb side of the wrist. It does not teach placing the device against the chest before making the

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measurement. However, Ota et al teaches that when using a wrist blood pressure measuring device, errors occur if the device is not at the same level as the heart. In the second embodiment (figure 7), Ota includes a sound sensor that is placed on the chest to locate the heart and ensure accurate readings. Hence, it would have been obvious to modify Terada to use such a sound sensor, so as to ensure the accuracy of the readings. Claim 44 is rejected in that the sound sensor functions as a positioning system. Claim 45 is rejected in that the positioning system gives an audible indication of the proper positioning via buzzer 9. With respect to claims 46-48, Ota does indeed indicate whether the cuff is at the proper position or not. It does not use arrows. However, applicant has given no reason why arrows were selected and applicant has not stated that arrows solve a stated problem. As such, it would have been a mere matter of design choice for one skilled in the art to choose the proper indication technique.

Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Terada in view of Peel III. The only difference between Ota and the invention of claim 49 is that the present claimed invention automatically triggers the blood pressure measurement upon satisfaction of the condition, e.g. proper positioning. Peel III is a device that makes blood pressure measurements that detects a condition and when the condition is satisfied (passage of a predetermined time period since the last measurement) automatically triggers a measurement. From this teaching, it would have been obvious to modify the above combination et al to automatically trigger the measurement, to simplify its operation

Claims 19, and 26 are allowable.

Claims 19 and 26 define over the art in that none of the art displays an error message if the limb is displaced(19) or is subject to error-producing displacement (claim 26) during blood pressure measurement, as claimed.

Claims 33, 36 and 40 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action. Specifically, claims 36 and 40 would be allowable if applicant simply removed the time measuring mechanism from the claims.

Claim 33 defines over the art in that none of the art shows the time measurement mechanism in combination with the remainder of the claim. However, if applicant were to remove the time measurement mechanism, the art rejection would be revisited, as applicant broadened the claim from the previously indicated allowable claim.

Claim 36 defines over the art in that none of the art activates an error flag if the limb is not in the proper position during measurement.

Claim 40 defines over the art in that none of the art teaches allowing the display to be read only if the measuring device is in the proper position, as claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

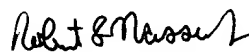
Souma shows a blood pressure measuring device that displays an error for improper measurements, and is pertinent to claim 33.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert L. Nasser  
Primary Examiner  
Art Unit 3736

RLN

February 23, 2004

ROBERT L. NASSER  
PRIMARY EXAMINER



JOHN E. KITTLE  
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